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**10 DEN B-6**

## Pesticides

### Pollinator Protection Emerges as Key Issue For EPA, Across Federal Government



By David Schultz

Jan. 14 — Though there may not be a major regulatory event in 2015, several major pesticide and biotechnology issues could see meaningful change in the coming year.

The most significant issue is likely to be the federal government's changing stance toward protection of pollinator insects.

In 2015, this and other issues will be debated across multiple federal agencies, as well as within the halls of Congress and in several federal courtrooms across the country. That's according to year-end interviews with various stakeholders in the pesticide and biotechnology realm.

#### Protecting Pollinators

Jim Jones, head of the EPA's Office of Chemical Safety and Pollution Prevention, told Bloomberg BNA his team's work on protecting pollinators will be "issue No. 1" in 2015.

Agencies across the federal government have made pollinators a priority after an alarming recent decline in the populations of these insects. Department of Agriculture research has found that the number of beehives in the U.S. declined by more than 58 percent between 1947 and 2012 (236 DEN A-4, 12/9/14).

On June 20, the White House launched an interagency task force, co-chaired by the EPA and the USDA, to develop a national pollinator strategy. The White House is scheduled to release that strategy in early 2015 (120 DEN A-5, 6/23/14).

Jay Vroom, head of the pesticide industry trade group CropLife America, said he has some initial concerns about what appears to be a lack of coordination and thoroughness among the task force's participants. For example, he said one of its early releases, a guidance document from the Council on Environmental Quality on how to make federal buildings more pollinator-friendly contained a provision instructing agencies not to use certain insecticides on plants in their facilities, despite many state laws that require some plants to be treated to prevent invasive species infestations (205 DEN A-10, 10/23/14).

Jones said his office had been working on this issue long before the Obama administration launched its task force, through its examination of the role insecticides play in pollinator health. However, he said the increased attention has allowed the agency to accelerate its efforts, especially its review of the registrations of several neonicotinoid insecticides, which are manufactured by agribusiness giants such as Bayer CropScience and Syngenta.

"We've definitely been able to pick up the timing," Jones said. "We've picked up at least a year on that as a result. The presidential memo brought a greater level of priority."

#### BNA Snapshot

##### Top Pesticide Issues in 2015

- Release of the federal government's national pollinator strategy may lead to tighter restrictions on certain insecticides.
- As the EPA fends off a lawsuit over its approval of Dow's new Enlist herbicide, it is poised to approve another new herbicide from Monsanto.
- A series of more than 175 lawsuits against the company Syngenta over its Viptera line of corn could affect the way agribusiness companies market and sell GMO crops.

***"That approval of this new generation of [GMO] crops highlights the gaps in our regulation of this technology. [The EPA] overlooked a whole range of impacts on farmers and farm community health."***

***Kristin Schafer, Pesticide Action Network***

The EPA is reviewing the registrations for several neonicotinoid insecticides, which have been linked to widespread bee deaths in recent years. The agency expects to complete the reviews of the most widely used of these chemicals by 2018. Also, the agency is considering proposing new restrictions in early 2015 on how neonicotinoids and other insecticides can be used, Marietta Echeverria, a high-level official working under Jones, told a meeting of state pesticide officials Dec. 8 (236 DEN A-4, 12/9/14).

However, the agency may be forced to act sooner than planned by either the judicial or legislative branches.

A group of environmental advocates is asking a federal judge in Northern California to force the EPA to take two of the most commonly used neonicotinoid chemicals off the market (*Ellis v. Bradbury*, N.D. Cal., No. 13-1266, 3/21/13; 56 DEN A-13, 3/22/13).

George Kimbrell, a senior attorney with the Center for Food Safety who is litigating the case, told Bloomberg BNA that briefing will begin in late spring or early summer and that he expects the court will issue a decision before the end of 2015.

Also, a bill that would temporarily ban the four most widely used neonicotinoids is likely to be reintroduced during the upcoming session of Congress, according to Kristin Schafer, a program and policy director at the Pesticide Action Network.

The bill, the Saving America's Pollinators Act of 2013, was originally introduced in the House by Reps. Earl Blumenauer (D-Ore.) and John Conyers (D-Mich.). It never made it out of the House Agriculture Committee (183 DEN A-5, 9/22/14).

## **New Herbicides**

One of the most highly anticipated actions the EPA took in 2014 was its Oct. 15 approval of the herbicide Enlist Duo for sale in the U.S. (200 DEN A-14, 10/16/14).

The Enlist herbicide, developed by Dow AgroSciences, is a mixture of the chemicals glyphosate and 2,4-D. It is meant to be used on corn and soybean crops, which Dow also developed, that are genetically modified to be tolerant of these chemicals. This allows farmers to use the Enlist herbicide on a widespread basis without damaging the crops they're trying to protect.

Almost immediately after the EPA announced its approval, environmental groups filed lawsuits against the agency in the U.S. Court of Appeals for the Ninth Circuit seeking to overturn the approval. The lawsuits have been consolidated, and Dow has successfully been added as an intervenor defendant (*Natural Res. Def. Council v. EPA*, 9th Cir., No. 14-73353, 10/30/14).

"That approval of this new generation of [GMO] crops highlights the gaps in our regulation of this technology," Schafer said. The EPA "overlooked a whole range of impacts on farmers and farm community health."

Vroom said he doesn't think this litigation will slow Dow down in bringing its new products to market. "As an industry, we're well acquainted" with litigation, he said. "I'm sure that these companies and their customers are well prepared to manage all of that."

Barring any court action, Dow has said it plans to begin selling the Enlist herbicide and its accompanying GMO crops before the beginning of the 2015 growing season. By then, it may not be the only new herbicide-based GMO crop system hitting the market.

Monsanto, a Dow competitor in the agriculture industry, is on its way to winning approval for a similar herbicide-and-GMO-crop pairing, which it is marketing under the trade name Xtend. Monsanto's herbicide contains a mixture of the chemicals dicamba and glufosinate.

***"They're like from outer space."  
Jay Vroom, CropLife America, on  
agency cost estimates for the***

On Dec. 12, the USDA issued a favorable environmental impact statement for strains of cotton and soybeans Monsanto developed that are tolerant of dicamba and glufosinate.

Meanwhile, Jones said the EPA's final decision on whether Monsanto should be allowed to sell its

**farmworker protection standard**

Xtend herbicides won't be far behind. When a company submits a crop and herbicide pairing to the USDA and EPA, he said, the two agencies try to coordinate the timing of each of their

respective rulings.

"On Enlist, it was very highly synchronized," Jones said. With Monsanto's new products, "they're not that far off. ... They're within months of each other."

**GMO Lawsuit**

The future of GMO agriculture may also be influenced by class action litigation against the company Syngenta (*In re: Syngenta AG MIR162 Corn Litig.*, D. Kan., No. 2:14-md-02591, 12/22/14).

More than 175 corn farmers and exporters are suing Syngenta in federal court over what they argue was the agribusiness company's overzealous development and marketing of Viptera, its line of GMO corn. In late 2013, traces of Viptera wound up in shipments of corn from the U.S. to China, which at the time had a zero-tolerance policy for GMO crops.

This eventually prompted China to issue a ban on all imports of U.S. corn, which caused the price of corn on global markets to plummet and, in turn, the plaintiffs' businesses to suffer. The plaintiffs are arguing that Syngenta should have been more cautious in selling Viptera in the U.S. before the product won approval in China because there was a high likelihood that the GMO crops would cross-pollinate with conventionally grown crops.

Paul Hanly, an attorney representing one of the plaintiffs in the case, also told Bloomberg BNA that Syngenta misled its customers by stating that Chinese approval of Viptera was imminent.

Syngenta has denied any wrongdoing and said it was legally permitted to sell its crops in the U.S. Meanwhile, Chinese authorities have since lifted their ban on Viptera (245 DEN A-7, 12/22/14).

Hanly said the dozens of lawsuits, which were recently consolidated and moved to federal district court in Kansas City, Kan., could have a significant effect on how the GMO industry operates.

"If the case results in a GMO manufacturer having to pay billions of dollars, I can guarantee that will catch the attention of every other GMO company in the world," he said. "It will be a signal or a warning to the entire GMO market that you have to exercise care in what you're creating and what you're saying about your creations."

**Worker Protection Standards**

Jones said the EPA's proposal in February of new standards to protect farm workers from exposure to pesticides was "the most significant action the program took" in 2014 (35 DEN A-13, 2/21/14; RIN 2070-AJ22).

The proposed standards would include measures that increase the frequency of mandatory pesticide training that farm workers must undergo, require employers to inform their workers about their legal rights as they pertain to pesticide exposure and prohibit most children under 16 from handling many pesticides.

Schafer said this last provision doesn't go far enough—she said 16 is too young to handle what can be dangerous chemicals. However, Vroom criticized the EPA's calculations of how much these new standards will cost the agriculture industry, saying, "They're like from outer space."

The EPA had originally planned to issue the final version of the worker protection standards in May. However, now the agency tells Bloomberg BNA that, to give USDA and Congress adequate time to review the standards before they're made final, this won't happen until "late summer/early fall."

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